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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/503,401	02/14/2000	Ramin Rezaifar	QCPA451DIV2	6558
23696	7590	03/24/2004	EXAMINER	
Qualcomm Incorporated Patents Department 5775 Morehouse Drive San Diego, CA 92121-1714			VOLPER, THOMAS E	
		ART UNIT	PAPER NUMBER	
		2665		

DATE MAILED: 03/24/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/503,401	REZAIIFAR ET AL.	
	Examiner Thomas Volper	Art Unit 2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 December 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicants' arguments filed 22 December 2003 have been fully considered but they are not persuasive.
2. In response to Applicants' argument that Honkasalo is distinct from claim 1, which states "transmitting a message indicative of the rate of said data and the time interval over which said data will be transmitted at said rate," in that Honkasalo discloses the mobile station requesting parallel code channels and the base station signaling the period of time, the Examiner respectfully disagrees. Honkasalo discloses a base station that assigns a number channels, which indicates a data rate, for a given a period of time (col. 5, lines 58-67). This assignment represents the message of the present invention. Even though the mobile station in the invention of Honkasalo requests the channels, the indication of the data rate is still given by the base station. Applicants' arguments fail to overcome the 35 U.S.C. 102(e) rejection of claim 1, thus this action is deemed final.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Honkasalo (US 6,137,789).

Regarding claim 1, Honkasalo discloses a mobile station for requesting multiple code channels for high speed data transmission. The mobile station requests a number of parallel code channels and a base station signals an assigned number of channels for a given period of time (col. 5, lines 58-67). Honkasalo shows data rates dependent on the number Supplemental Code Channels in Table 1 (col. 7, lines 1-12). The data rate of transmission is implicitly stated in the number of channels assigned to the mobile station by the base station. Thus, the signaling of assigned channels and given period of time by the base station meets the limitations of transmitting a message indicative of the rate of said data and the time interval over which data transmission will be transmitted.

Regarding claim 2, the frame type is inherent in the signaling of assigned code channels. Honkasalo discloses that supplemental code channels may be used by the mobile station to transmit high speed data. Thus, in response to a mobile station request, the signaling from the base station indicates the number of assigned supplemental code channels, whereby supplemental channel is the frame type.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Honkasalo (US 6,137,789).

Regarding claim 3, Honkasalo discloses signaling a data transmission rate, time interval and frame type from a base station to a mobile station (col. 5, lines 58-67; see also Table 1). Honkasalo fails to expressly disclose that the frame type is indicated by two bits and that the data transmission rate and time interval are both indicated by four bits. However, it is generally considered to be within the ordinary skill in the art to adjust, vary, select or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on Applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937); Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 471 (1943); In re Schneider, 148 F.2d 108, 65 USPQ 129 (CCPA 1945); In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1955); In re Saether, 492 F.2d 849, 181 USPQ 36 (CCPA 1974); In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). At the time the invention was made it would have been obvious to a person of ordinary skill in the art to use as many bits as necessary to indicate the frame type, data rate and time interval in the invention of Honkasalo. One of ordinary skill in the art would have been motivated to do this because the number of bits needed to indicate these values may be greater or less than the specified number depending on the system implementation. For example, Honkasalo indicates that the data rate is specified by the number of supplemental channels that are assigned. If a maximum of eight channels may be assigned, then only three bits are necessary to indicate the data rate.

Conclusion

7. Any inquiry concerning this communication, or earlier communications from the examiner should be directed to Thomas Volper whose telephone number is 703-305-8405 and fax number is 703-746-9467. The examiner can normally be reached between 8:30am and 6:00pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu, can be reached at 703-308-6602. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4750.

Thomas E. Volper

TV

March 19, 2004



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